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REMARKS

This is in response to the Official Action mailed March 9, 2005. Applicant notes with appreciation the Examiner's careful review of the pending claims.

Applicants present new claims 5-12 for consideration by the Examiner. Support for the new claims can be found throughout the application as filed, and accordingly the new claims do not introduce new matter. Support for new claim 5 can be found, for example, at paragraph [0047] of the application as filed electronically. Support for new claims 6 and 7 can be found, for example, at paragraph [0036] of the application as filed electronically. Support for new claims 8 and 9 can be found, for example, at paragraph [0037] of the application as filed electronically. Support for new claims 10-12 can be found, for example, at paragraph [0038] of the application as filed electronically. Entry and consideration of new claims 5-12 are accordingly respectfully solicited.

The Examiner has removed the grounds of rejection that were applied in the previous office action. The Examiner now argues that claim 2 is in improper dependent form and further argues that the claims are indefinite. In addition, the Examiner has rejected the claims as anticipated, relying on three newly cited documents, namely, the Roudaout article, the Alanen article, and Pourabmady (U.S. Pat. No. 5,292,823). Applicants respectfully traverse the rejections of record and offer the following comments in support of the patentability of the present invention.

Applicants respectfully submit that the temperature recitation of Claim 2 is proper. To advance prosecution of this matter, however, the form of Claim 2 is amended to state that the fats and oils are partially melted. Inasmuch as claim 2 is merely reworded, the amendment is not presented for a reason related to patentability, and accordingly the claim amendment does not limit the scope of protection afforded Applicants, including any protection available under the doctrine of equivalents.

Applicants traverse the indefiniteness rejection. Applicants respectfully submit that one of ordinary skill in the art would understand the meaning of the objected to terms,

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particularly in view of the teachings of the specification, which must be considered in its entirety for all that it fairly teaches.

With regard to the term "at least some fats and oils," Applicants submit that the terms are well known in the art, and accordingly the skilled artisan would understand the meaning of the same. In addition, without limiting the scope of protection afforded Applicants, the Examiner's attention is directed to the specification, for example, to paragraph [0002] of the application as filed electronically, which discusses the problems associated with the chemical analysis of foodstuffs and other materials for which it is advantageous to know moisture and fat and oil content. See also paragraphs [0003] and [0051] and the table at paragraph [0056], which gives non-limiting examples of samples for NMR analysis in accordance with the claimed invention.

With regard to the term a pad that is "free of atoms that would interfere with or mask the proton NMR response of the protons in the fats and oils in the sample," again Applicants respectfully submit that the skilled artisan would understand the meaning of the term. The specification as filed includes extensive discussions on the principles of NMR analysis and how it can be used to differentiate different substances in a sample. Further, the application refers to known NMR response data from known samples. The Examiner's attention is directed, for example, to paragraphs [0015], [0042] and [0050-0051], which refer to comparing the NMR response of the sample to the NMR response of similar samples having known fat and oil content. In addition, again without limiting the scope of protection afforded applicants, the Examiner's attention is directed, for example, to paragraphs [0036-0037], which refer to exemplary materials useful in the invention.

The Applicants submit that the claimed invention is definite, and one of ordinary skill in the art would understand the meaning of the terms objected to by the Examiner. Applicants accordingly respectfully request withdrawal of the indefiniteness rejection.

The Examiner also argues that the claimed invention is anticipated by "any sandwich made of bread and any food product comprising fat or oil...wrapped in any convention

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polyvinyl chloride (PVC) wrapper." The Examiner relies upon the combination of three references to support her conclusion. Applicants respectfully traverse this rejection as well.

As a preliminary matter, Applicants respectfully submit that the reliance upon three different references undermines the fundamental legal basis for an anticipation rejection under Section 102. A claim is anticipated only if each and every element as set forth in the claim is found in a single prior art reference. Accordingly, normally only one reference should be used in making a rejection under 35 USC § 102. In the present application, the Examiner improperly relies upon the combination of three references to support the anticipation rejection.

Even if the multiple references are properly cited in the rejection of record, Applicants respectfully submit that the references do not support the Examiner's rejection. The Examiner relies upon Roudaout to support the position that bread is a substrate satisfying the recitation of a pad that is "free of atoms that would interfere with or mask the proton NMR response of the protons in the fats and oils in the sample." Yet, the Roudaout article, including the title relied upon by the Examiner ("mobility of lipids in low moisture bread," emphasis added), contradicts the Examiner's conclusion. The Roudaout article teaches that bread includes lipids that respond to NMR. Accordingly, bread is not "free of atoms that would interfere with or mask the proton NMR response of the protons in the fats and oils in the sample."

The Examiner relies upon Alanen and Pourahmady to support the position that PVC satisfies the recitation of a sheet material that is "free of atoms that would interfere with or mask the proton NMR response of the protons in the fats and oils in the sample." The Alanen article is silent with respect to a specific NMR signal exhibited by fat molecules. Even if Alanen could be considered to teach a specific fat proton NMR signal, Alanen further notes that fat molecules exhibit a NMR signal spectrum, resulting from the different functional groups present on the fatty acid molecule. See page 957. Pourahmady similarly indicates that PVC molecules exhibit a NMR signal spectrum, resulting from different functionalities on the

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PVC molecule. See Figures 1-4. In view of the spectrum of signals exhibited by the fat and PVC molecules, the cited references contradict the Examiner's position, i.e., one could conclude that fat and PVC could exhibit overlapping NMR signals that interfere with one another.

The cited "sandwich" prior art accordingly does not necessarily exhibit the characteristics argued by the Examiner. Further, the articles cited by the Examiner can be read to contradict the Examiner's conclusion. The cited references also do not suggest the claimed invention. Applicants respectfully submit that the references have been applied in hindsight with the Office merely selecting the desired elements from each reference while ignoring the overall teaching of the references and similarly ignoring the overall frustration of purpose that the combination would bring.

Therefore, Applicants submit that the cited "sandwich" prior art, either considered alone or in view of the combination of cited references, fails to render the pending claims anticipated or obvious and respectfully request that the Office pass the claims to allowance at the earliest possible date.

Respectfully submitted,



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